

Cressona

Consent Decree

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

Plaintiff,

v.

Cressona Aluminum Company, Inc.,

Defendant.

Civil Action

No. 92-5212

JUDGE VANANTWERPEN

CONSENT DECREE

WHEREAS, the United States of America ("United States") on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint on September 10, 1992, against Defendant Cressona Aluminum Company, Inc., ("Cressona") under Sections 7 and 17 of the Toxic Substances Control Act ("TSCA" or the "Act"), 15 U.S.C. §§ 2606 and 2616, seeking to compel cleanup and disposal of polychlorinated biphenyls ("PCBs") and to enjoin permanently Defendant's ongoing violations of Sections 6(e) and 15 of TSCA, 15 U.S.C. §§ 2605(e) and 2614, and TSCA's implementing regulations codified at 40 C.F.R. Part 761, et seq., ("PCB regulations") at Defendant's facility at Cressona, Pennsylvania (the "facility");

WHEREAS, the complaint filed by the United States on September 10, 1992, against Cressona Aluminum Company, Inc. also alleged that Cressona violated Section 301 of the Clean Water Act, 33 U.S.C. § 1311 ("The CWA") and violated conditions and limitations of National Pollutant Discharge Elimination System ("NPDES") Permit Number PA 0012726;

WHEREAS, Defendant uses, has used, disposes and has disposed of, and stores for disposal PCBs, and PCB-Contaminated materials at the facility;

WHEREAS, the United States alleges that Defendant has failed to comply with the requirements of 40 C.F.R. Part 761; and

WHEREAS, Defendant has agreed to cleanup and properly dispose of all PCBs, and PCB-Contaminated materials located at the facility as specified herein;

WHEREAS, the United States alleges that Cressona violated effluent limitations set forth in NPDES Permit No. PA0012726, which permit was issued by the Commonwealth of Pennsylvania pursuant to Section 402 of the CWA, 33 U.S.C. § 1342;

WHEREAS, the United States alleges that Cressona violated Section 301 of the Act, 33 U.S.C. § 1311, by discharging into the Schuylkill River pollutants not authorized by any NPDES permit or the Clean Water Act.

WHEREAS, Cressona has obtained renewal of said permit and has agreed to comply with permit;

WHEREAS, the parties to this suit, having agreed that settlement of this matter and entry of this Consent Decree without trial or further adjudication is the most appropriate means of resolving this matter, hereby stipulate that this Consent Decree should be entered.

NOW, THEREFORE, it is hereby ORDERED as follows:

## I. JURISDICTION

1. This Court has jurisdiction of the subject matter of this action and jurisdiction of the parties consenting hereto pursuant to Section 17(a) of TSCA, 15 U.S.C. § 2616(a), Section 309(b) of the CWA, 33 U.S.C. § 1319(b) and 28 U.S.C. §§ 1331 and 1345 and 1355.

## II. BINDING EFFECT

2. This Consent Decree shall apply to and be binding upon the United States and the Defendant and upon Defendant's officers, directors, agents, employees, contractors, successors, heirs and assigns and upon all persons or firms acting under or for them. The undersigned representative of the Defendant certifies that he is fully authorized by the Defendant to enter into the terms and conditions of this Consent Decree and to execute and to legally bind the Defendant to it. The Defendant shall provide a copy of this Decree to each person, including all contractors and subcontractors, retained to perform the remedial action contemplated by this Consent Decree and shall condition any contract for such remedial action on compliance with this Consent Decree.

3. With respect to those portions of the property upon which industrial activity has occurred or which have been impacted by PCBs, no conveyance of title, easement, or other possessory interest including, but not limited to, leaseholds in the facility shall be consummated without a provision binding and obligating all parties who acquire any interest in the facility to submit to the jurisdiction of this Court and all requirements and provisions of this Consent Decree. At least 60 days prior to any conveyance, the Defendant shall notify

EPA by registered mail of its intent to convey any interest in the property and of the steps taken to comply with the provisions of this paragraph. No such conveyance shall relieve the Defendant from its obligation to perform under this Decree.

4. Defendants shall record an original executed Declaration among the Land Records of Schuylkill County, Pennsylvania in such manner as shall be effective to bring said Declaration to the attention of any person examining or researching the state and/or quality of the title to the real property described in Attachment 1 hereto or searching for any encumbrances, covenants, easements, liens, restrictions, or other limitations relating to said property. Defendants shall provide proof of recording to EPA and the State within ten (10) days after the effective date of this Consent Order. The Declaration shall describe the location and extent of all PCB contamination in excess of 10 ppm, and may include a description of any remedial measures required by this consent decree.

5. This Consent Decree shall be binding upon Defendant upon the date of signature by Defendant.

### III. DEFINITIONS

Unless otherwise defined herein, terms relating to TSCA used in this Consent Decree shall have the meaning given to those terms in 40 C.F.R. Part 761.3, and terms relating to the Clean Water Act the meaning given in 33 U.S.C. §§ 1251 et seq., and the regulations promulgated thereunder.

"Bulk PCB Concentration" as used herein shall mean PCB concentration in parts per million (ppm) by weight.

"Non-detectable Level of PCBs in water or wastewater" is defined as the concentration of PCBs not detectable using EPA Method No. 608 or other EPA approved equivalent method.

"Detectable Level of PCBs in water or wastewater" is defined as the concentration of PCBs detectable using EPA Method No. 608 or other EPA approved equivalent method.

"Target cleanup levels" are the levels specified in paragraphs V.A.2 and V.B.2 of this decree.

#### IV. OBJECTIVES

It is the express purpose of the parties in entering this Decree to further the objectives of the Toxic Substances Control Act and the Clean Water Act. All plans, studies, construction, remedial measures, monitoring programs, and other obligations in this Decree or resulting from the activities required by this Decree shall have the objective of causing Defendant to achieve and maintain compliance with the Toxic Substances Control Act and the Clean Water Act, including compliance with NPDES Permit No. PA0012726, renewals or amendments to that permit, and the provisions of applicable federal and state laws and regulations.

#### V. COMPLIANCE REQUIREMENTS - TSCA

##### A. Soils, Sludges, and Groundwater

##### 1. Precleanup Sampling

Cressona shall perform sufficient sampling to fully characterize the PCB contamination at the Cressona facility, for the purpose of evaluating the need for remediation. Prior to performing such sampling, Cressona shall submit sampling plans to EPA for review.

EPA review of sampling plans is for purposes of determining that the scope of pre-cleanup sampling includes all potentially contaminated areas, but such review, and any EPA approval of a sampling plan does not establish that a sampling plan is technically adequate nor does such approval relieve Cressona of its responsibility to identify all PCB contamination at the site. The sampling requirements listed below must be included in the precleanup sampling conducted.

a. Sludges

1. Cressona shall sample the sludges in Lagoons Nos. 1 and 2 and in the outside oil storage tank presently used to store accumulated filtered sludge from ongoing manufacturing processes. Test results shall be reported on the basis of dry weight of the samples. Samples shall not be composited. A report of the sampling results shall be made to EPA Region III by July 30, 1993, or within 90 days of EPA's approval of the sampling plan, whichever is later. Alternatively, Cressona may choose not to sample the wastewater treatment sludge and shall dispose of this material (via incineration) as 500 ppm or greater PCB material (See Section V.A.1.a.4).

2. If Cressona does choose to sample the lagoons, samples from Lagoons Nos. 1 and 2 shall be collected at the points of intersection of a grid pattern with a spacing of 10 ft. between grid lines overlaid on the lagoons. At each point of intersection, a sample shall be collected at the surface, and at 3.0 foot intervals from top to bottom of each lagoon.

3. With respect to the wastewater treatment sludge in the oil storage tank and filter cake in other storage facilities,

all such material shall be adequately sampled for the purposes of treatment or disposal. At a minimum, three samples shall be collected from the top, middle, and bottom of the oil storage tank.

4. Sludge that will be disposed of by incineration or an incineration alternative need not be sampled for PCBs by Cressona, but shall be presumed to contain greater than 500 ppm PCBs.

**b. Soils**

No additional sampling in the area north of the lagoons need be conducted. The data reported by Cressona in its two reports, Report on Results of Soil Sampling for PCB Contamination, May 1988 and January 1991, satisfies Cressona's precleanup sampling requirement.

**c. Groundwater**

Cressona shall develop and submit to EPA for review and approval a groundwater monitoring plan, in accordance with Attachment 2 (EPA Publication - RCRA Groundwater Monitoring Technical Enforcement Guidance Document, September 1986), by February 28, 1993. The plan shall be sufficient to characterize and determine the extent of PCB levels in groundwater beneath the contaminated soil, and downgradient of the lagoons and the Mill Building. The plan shall be implemented within 90 days after EPA's approval.

**d. EPA Approval of Sampling Plans**

Defendant shall submit a plan providing for precleanup sampling of the soils, sludges, and groundwater at the Cressona site by February 28, 1993.

EPA will review and comment upon Defendant's workplans. Upon receipt of EPA's comments, Defendant shall incorporate EPA's comments into the workplans and resubmit the workplans for approval within fifteen days. Upon approval by EPA, Defendant's workplans shall be submitted to the Court and made a part of this Consent Decree as Addendum A.

**2. Decontamination and Remediation to Achieve Target Cleanup Levels**

**a. Soil, Sludges, and Groundwater**

1. Cressona shall either dispose of all soils and sludges excavated pursuant to paragraph V.A.2.a.4 of this decree at an approved offsite PCB incineration or PCB landfill facility in accordance with 40 C.F.R. Section 761.60 et seq., or, alternatively, Cressona shall evaluate and propose alternative disposal or alternative landfill methodology(s) for approval by EPA in accordance with 40 C.F.R. Section 761.60 et seq., and perform such alternative methodology if approved by EPA.

2. If Cressona does not choose to evaluate alternative disposal or alternative landfill technologies, Cressona must dispose of all soils and sludges excavated pursuant to paragraph V.A.2.a.4 of this decree by June 30, 1993, in an EPA approved offsite disposal facility, in accordance with 40 C.F.R. Section 761.60 et seq.

3. Cressona's evaluation of alternative disposal or alternative landfill technology(s) must be in accordance with the schedule in Section V.A.2.b of this decree.



4. The contiguous soil area north of the lagoons shall be excavated to a depth of 0'6" over the entire area where concentrations of PCBs exceed the target cleanup level of 25 ppm. Within this excavated area, spot excavations shall be done where necessary to remove the PCB contamination greater than 25 ppm identified by the precleanup sampling results. The excavation shall include a buffer area of 3 feet at the perimeter. Cressona shall provide any necessary surface drainage controls in order to prevent erosion of PCB-Contaminated soils during the cleanup.

Any backfill material used in excavated areas shall have a PCB concentration of less than 2 ppm. No backfill shall be placed in the excavated area until EPA has reviewed all post-cleanup sampling results and approved the cleanup.

All areas with residual PCB concentrations of 10 ppm to 25 ppm PCBs shall be adequately posted with signs warning of PCB contamination.

5. Sludges shall be removed from Lagoons Nos. 1, 2, and 3 to the depth of the liner bottom regardless of PCB level. If sludge has leaked through the bottom of the lagoon, all such sludge shall be removed. All sludges removed pursuant to this paragraph shall be properly disposed of in accordance with 40 C.F.R. Part 761.

6. All sludge shall be removed from the oil storage tank. After removal of bulk sludge, all surfaces of the lagoon liners and tank shall be decontaminated and properly disposed of in accordance with 40 C.F.R. Part 761 until the remaining residue contains less than 10 ppm of PCBs.

7. If PCBs are detected in groundwater samples at any time, Cressona shall immediately notify EPA and perform a groundwater quality assessment to determine if there has been a release to groundwater. Cressona must confirm or disprove the potential release of PCBs within 60 days. If a release of PCBs is confirmed, Cressona shall, within 30 days, submit to EPA for approval a plan to investigate the nature and extent of the contamination, including a schedule for implementation. Within 45 days of completion of the investigation, Cressona shall submit to EPA for approval a plan for evaluating remedial alternatives, including a schedule for implementation. Within 45 days of completion of the remedial alternative evaluation, Cressona shall submit to EPA for approval a plan for implementation of the selected remedial alternative, and upon approval, Cressona shall implement this remedial alternative.

8. The removal of PCB contaminated soils and sludges shall be completed by June 30, 1993, unless Cressona seeks to employ a TSCA alternative disposal or alternative landfill method, under 40 C.F.R. § 761.60, in which case the deadline may be extended by the length of the permit application and approval process (See section V.A.2.b).

**b. Selection of Sludge and Soil Disposal Methodology**

**1. Solidification**

a. Cressona may elect to evaluate a solidification methodology which, if approved by EPA, in accordance with 40 C.F.R. § 761.75, would provide for the onsite burial of the solidified mass. If approved by EPA as an alternative method to disposal by landfilling, solidification may be applied to all soils and all

dewatered sludges, regardless of PCB concentration. If Cressona makes this election, it must adhere to the following schedule.

b. By March 2, 1993, Cressona shall perform and submit the results of a preliminary phase solidification treatability test. The results should include a projection as to the technical feasibility of solidification as an alternative method to disposal by landfilling.

c. By March 2, 1993, Cressona shall submit a report to EPA listing the waivers from the disposal requirements of 40 C.F.R. Section 761.60 Cressona will seek for the solidification methodology.

d. By March 30, 1993, Cressona shall submit a second phase treatability test protocol on solidification. EPA may approve or disapprove the treatability test protocol or portions thereof. EPA shall notify Cressona of such objections and the changes that are necessary to correct the test protocol. Cressona shall submit, within 14 days of receiving EPA's objections, a revised test protocol for EPA's approval.

e. Thirty days after EPA approval of the second phase treatability testing protocol on solidification, Cressona shall submit documentation to demonstrate it has arranged for testing, and have collected samples to be used in the testing.

f. The second phase treatability testing protocol for solidification shall be completely implemented 120 days following second phase treatability sample collection. During the implementation, Cressona shall submit interim reports to EPA at 60-day

intervals describing the testing completed as of that date.

g. Sixty days after the completion of the second phase treatability testing on solidification, Cressona shall submit to EPA the treatability test results for solidification.

h. If EPA disapproves the treatability test results and/or the solidification technology plan submitted by Cressona, Cressona may not employ solidification as an alternative method for disposal by landfilling of soil and sludges.

## 2. First Alternative Technology

a. If Cressona wishes to consider the election of an alternative disposal method which is equivalent to the incineration requirements of 40 C.F.R. Section 761.60(a), Cressona shall submit an interim report describing all efforts to identify and evaluate the First Alternative Technology by March 2, 1993.

b. By March 2, 1993, Cressona shall commence treatability testing of an alternative technology which satisfies the incineration equivalence standards of 40 C.F.R. Section 761.60(e).

c. The treatability testing for the First Alternative Technology shall be completed by June 30, 1993.

## 3. Second Alternative Technology

a. If Cressona wishes to consider the election of a second alternative disposal method which will satisfy the incineration requirements of 40 C.F.R. Section 761.60(a), Cressona may submit an interim report describing all efforts to identify and evaluate a Second Alternative Technology by April 1, 1993.

b. If Cressona wishes to consider employment of a second alternative disposal technology, Cressona shall commence treatability testing of that technology by June 30, 1993.

c. The treatability testing of a Second Alternative Technology shall be completed by October 30, 1993.

d. By December 15, 1993, Cressona shall submit a proposal for any alternative technology Cressona wishes to employ as an alternative disposal method for the disposal of soils and sludges.

4. Approval/Disapproval of Technology Plan(s)

a. If EPA disapproves all of the alternative technology method(s) submitted by Cressona, Cressona may not employ any alternative technology as an incineration and/or landfill alternative disposal method for soil and sludges. Cressona must dispose of all soils and sludges as outlined below in section V.A.2.c.3 by April 30, 1994, or within 120 days of EPA disapproval of the alternative technology method(s) submitted by December 15, 1993, whichever is later.

**c. Application for Approval to Dispose of PCB Wastes**

1. If Cressona wishes to apply for any waiver from the TSCA landfill requirements, Cressona shall do so by March 2, 1994. Alternatively, Cressona may apply by March 2, 1994, to dispose of PCBs by using an alternative method that satisfies the incineration equivalence standards of 40 C.F.R. § 761.60(e).

2. If neither the waiver application nor an application for an alternative disposal method is submitted by March 2, 1994,

then all soils and sludges containing 25 ppm PCB or more must be transported to an approved TSCA landfill or incinerator by April 30, 1994, except that sludges containing 500 ppm PCB or more must be disposed of in an approved PCB incinerator, or other facility approved, pursuant to current PCB regulations, for disposal of such sludges.

3. If the waiver application and all applications for alternative disposal methods are disapproved, then all soils and sludges containing 25 ppm PCBs or more must be transported to an approved TSCA landfill or incinerator within 120 days of EPA disapproval, except that sludges containing 500 ppm PCBs or more must be disposed of within 120 days of EPA disapproval in an approved PCB incinerator, or other facility approved, pursuant to current PCB regulations, for disposal of such sludges.

**d. Disposal - Soils and Sludges by Solidification  
or Alternative Technology**

1. If EPA approves of Cressona's election to employ an alternative method for landfill or disposal, Cressona shall select a remediation contractor by January 31, 1995. At this time, Cressona shall submit to EPA a copy of the accepted bid document (with all addenda).

2. Cressona shall begin excavation and remediation of all PCB contaminated soils and sludges by March 17, 1995.

3. Cressona shall submit an interim report to EPA every 60 days during cleanup activities, and describe work completed to date.

4. Cressona shall complete excavation and remediation of all PCB-contaminated soils and sludges by November 17, 1995.

5. Excavated contaminated soils and sludges shall be disposed of in accordance with 40 C.F.R. Section 761.60, unless Cressona has obtained approval from EPA to use an alternative PCB disposal method.

6. The deadlines listed in Section V.A.2.d. of this Consent Decree may be extended pursuant to Section X of this decree (pertaining to force majeure) if EPA approval of an alternative technology plan is not given by September 30, 1994, and the late approval constitutes a force majeure event. However, late approval by itself will not necessarily be considered a force majeure event.

### 3. Post-Cleanup Sampling

Cressona shall perform sufficient sampling to verify that all PCB contamination has been reduced to target cleanup levels. Prior to performing such sampling, Cressona shall submit sampling plans to EPA for review. EPA review of sampling plans is for purposes of determining that the scope of post-cleanup sampling includes all potentially contaminated areas, but such review, and any EPA approval of a sampling plan does not establish that a sampling plan is technically adequate nor does such approval relieve Cressona of its responsibility to remediate all PCB contamination at the site in accordance with this Decree.

a. Cressona shall submit a post-excavation report to EPA Region III by September 15, 1995. Post-excavation sampling shall be conducted in the contiguous soil area north of the lagoons

in accordance with EPA Publication 560/5-85-026 Verification of PCB Spill Cleanup by Sampling and Analysis - August 1985.. Compositing of up to 5 samples per analysis is permissible. However, where a composite sample result exceeds 2 ppm, the samples shall be reanalyzed separately or the entire area from which the composites were taken shall be excavated. Where contamination is found, the area represented by the contaminated sampling points must be recleaned and resampled by Cressona. Cressona shall submit a final post-excavation report to EPA Region III by January 15, 1996.

b. No backfill shall be placed in any excavated area until EPA has approved the cleanup and reviewed all the post-excavation sample results. Sampling shall continue along radial lines (outside the excavation area) to verify that 2 consecutive samples outside the excavated area contain less than 10 ppm PCBs. Initial sample depth must be 0.0 to 0.5 ft. If sample results exceed 10 ppm PCBs, additional samples must be collected at 0.5 to 1.0 ft. and, if necessary, at 1.0 ft. increments until concentrations are less than 10 ppm in two consecutive samples. Test results shall be reported on the basis of dry weight of the samples. Samples shall not be composited prior to analysis. If any sample contains greater than 25 ppm PCBs, Cressona shall remediate the soils in the vicinity of the sample in accordance with Section V.A.2 of this decree.

c. Post-cleanup samples shall be collected from the surfaces of the lagoon liners, storage tank walls, and any residues that remain. Cleanup and sampling shall be repeated until the target cleanup level is achieved in each lagoon and the tank. If sludge



has leaked from the lagoon, Cressona shall sample for PCBs at the locations of the leaks to verify that all PCBs above target cleanup levels have been removed from the soil beneath the lagoons.

d. After groundwater decontamination procedures (if any) are completed, Cressona shall sample groundwater for PCBs at least once every three months from the time of completion until either March 1996 or the termination of this Decree, whichever is later.

e. Defendant shall submit all post-cleanup sampling data to EPA within sixty days of EPA's approval of the post-cleanup sampling workplan.

f. If the post-cleanup sampling data reveals that all PCBs were not removed as required by the remediation plan, or if EPA determines that PCBs have not been removed as required by this Decree, Defendant shall submit a plan for completion of the cleanup to EPA for approval, and the Defendant shall thereafter repeat remediation and post-cleanup sampling activities until PCBs been removed from the facility as required by this Decree.

g. Defendant shall certify successful completion of remediation to EPA in writing on or before March 2, 1996. Defendant's certification of completion of remediation activity shall include a description of all work completed under this decree. Defendant shall attach all available documentation supporting its certification.

## **B. Mill Building**

### **1. Precleanup Sampling**

Cressona shall perform sufficient sampling to characterize all PCB contamination at the Cressona facility, and to determine the

extent of such contamination for the purposes of determining the need for remediation. Prior to performing such sampling, Cressona shall submit sampling plans to EPA for review. EPA review of sampling plans is for purposes of determining that the scope of pre-cleanup sampling includes all potentially contaminated areas, but such review, and any EPA approval of a sampling plan does not establish that a sampling plan is technically adequate nor does such approval relieve Cressona of its responsibility to identify all PCB contamination at the site. The sampling requirements listed below are the minimum amount of sampling that Defendant shall conduct.

**a. Mill Building Floor Sampling**

The following sections pertaining to the Mill Building Floor Sampling are agreed to by the parties with the express understanding that either party may propose revisions thereto after additional data or analyses are available, and particularly, that Cressona may wish to formulate sampling approaches, at the workplan stage, which are consistent with, but differ from the provisions herein. The United States will give reasonable consideration to any proposed revisions by Cressona, but Cressona shall continue to comply with all the requirements of this Decree until the United States or a court of competent jurisdiction establishes an alternative requirement. Cressona may petition for dispute resolution with respect to any proposed revision which the United States either refuses to accept or seeks to impose, with respect to the Mill Building Floor Sampling.

1. Cressona shall conduct sampling in the Mill Building in accordance with the plan set forth in Attachment 3 (ENVIRON

report Indoor Remediation and Sampling Approaches for the Cressona Aluminum Company Facility, November 1991). In building areas where this "sampling-grid" approach cannot be accomplished (e.g., because of existing equipment layout), Cressona shall propose an alternative sampling approach to EPA. EPA will review and approve or disapprove the alternative sampling approach in their sole and non-reviewable discretion. This sampling shall determine the bulk concentration and surface concentration of PCBs throughout the Mill Building, and the floors areas in the building shall be categorized, based on this sampling, as Class A, Class B, or Class C, as described below.

## 2. Concrete Surfaces:

- Class A: Bulk PCB concentration greater than 50 ppm in the 0.0" to 0.5" floor depth segment; and bulk PCB concentration greater than 50 ppm in the 0.5" to 1.5" floor depth segment.
- Class B-1: Bulk PCB concentration less than 50 ppm in the 0.5" to 1.5" floor depth segment; and surface level of PCBs (determined by wipe sampling) greater than 100 ug/100 cm<sup>2</sup>.
- Class B-2: Bulk PCB concentration less than 50 ppm in the 0.5" to 1.5" floor depth segment; and surface level of PCBs (determined by wipe sampling) less than 100 ug/100 cm<sup>2</sup>.
- Class C : Bulk PCB concentration less than 50 ppm in the top 1/2" of flooring. Surface concentration of PCBs less than 10 ug/100 cm<sup>2</sup>.

### 3. Wood Surfaces:

Class A: Bulk PCB concentration greater than or equal to 50 ppm in a single vertical slice of wooden floor block.

Class B-1: Bulk PCB concentration less than 50 ppm in a single vertical slice of wooden floor block; and surface level of PCBs (determined by wipe sampling) greater than or equal to 100 ug/100 cm<sup>2</sup>.

Class B-2: Bulk PCB concentration less than 50 ppm in a single vertical slice of wooden floor block; and surface level of PCBs (determined by wipe sampling) less than 100 ug/100 cm<sup>2</sup>.

Class C : Bulk PCB concentration less than 50 ppm in a single vertical slice of wooden floor block; and surface level of PCBs (determined by wipe sampling) less than 10 ug/100 cm<sup>2</sup>.

4. Precleanup sampling in the Mill Building shall be conducted in three phases, as follows:

#### Phase 1:

This phase includes the sampling performed during September and November of 1990 by Cressona in the Mill Building, and additional sampling performed around four hydraulic units in December of 1991. Cressona collected core samples, spaced at 4 foot intervals along each side of each perpendicular transect of those hydraulic units (a total of 12 core samples per hydraulic unit) (see Attachment 3 for illustration of sampling points). Actual sample locations were

modified because of the proximity of the sampled units to each other and the presence of obstructions.

Phase 2:

This sampling shall be used to verify and refine the designations of areas as Class A, B, or C made following Phase 1 sampling. This sampling shall be conducted in accordance with Attachment 3, and in addition to the sampling described in Attachment 3 shall include the following sampling:

Phase 2-1:

The boundary between Class A and Class B areas shall be deemed to be at the first sample point where the Class B standard is met. The floors around unsampled hydraulic units shall initially be deemed to be Class A areas to a distance of ten (10) feet from the edge of the hydraulic unit. In addition, Cressona shall verify this boundary by taking four core samples, spaced equidistantly around the circumference of each hydraulic unit not sampled in Phase 1. Where a bulk PCB concentration of 50 ppm or greater is found in the floor depth segments of 0" to 0.5" and 0.5" to 1.5", then additional core samples must be taken, during Phase 2-2, outward from the initial ten (10) foot core locations, at four foot intervals along the transects of that hydraulic unit, until a bulk PCB concentration of less than 50 ppm is found in the floor depth segment of 0.5" to 1.5". In addition, one core sample of the floor shall be taken at the entrance to each walk-in pit area below each hydraulic system, if this area is determined to be outside the Class A area on the basis of Phase 1 sampling.

Where the bulk PCB concentration is less than 50 ppm in the floor depth segments of 0" to 0.5" or to 0.5" to 1.5", then additional core samples may be taken during Phase 2-2, inward from the initial ten (10) foot floor locations, at four foot intervals, to determine the boundary between Class A and Class B areas.

To determine the boundaries between Class B and Class C areas, a 100 foot by 100 foot grid shall be imposed on the floors throughout the western side of the plant (See Attachment 3). Wipe samples shall be taken at each point of intersection of grid lines, and core samples, to a depth of 2.5", shall be taken at random locations adjacent to 20% (approximately 5% in each quadrant) of the wipe sample locations. In addition, a minimum of twenty additional wipe samples shall be collected from aisles, plant access points, existing and former waste storage areas, and all other areas of concern not otherwise sampled to insure that the entire plant is characterized.

To determine the Class B / Class C boundary on the eastern side of the plant, a 100-foot by 100-foot grid shall be imposed on the plant flooring. Once the Class B boundary is determined, a 200-foot by 200-foot grid shall be imposed on the plant flooring in the Class B area. A larger grid is imposed in the Class B area because less sampling is necessary in an area where encapsulation is planned. The larger 200-foot by 200-foot grid will begin 100 feet into the Class B area. Wipe samples shall be taken at each grid line intersection, and core samples, to a depth of 2.5", shall be taken at random locations adjacent to 33% (approximately 8.25% in each quadrant) of the wipe sample locations in the Class B areas.

In Class C areas, core samples, to a depth of 2.5", shall be taken adjacent to 10% (approximately 2.5% in each quadrant) of the wipe sample locations within the Class C areas. At the border between Class B and Class C areas, core samples, to a depth of 2.5", shall be collected at every third wipe sample location.

A Phase 2-1 sampling plan shall be submitted to EPA by December 15, 1992. This plan shall include the results of the additional Phase 1 sampling required around the hydraulic units. Phase 2-1 sampling shall be completed and sampling results submitted to EPA ninety (90) days following EPA approval of the Phase 2-1 sampling plan.

Phase 2-2 sampling shall be carried out where needed to better delineate the boundary between Class A and Class B, Class B and Class C, and in Class B areas to distinguish between Class B-1 and B-2, if any area of the plant sampled during Phase 2-1 is determined by EPA, in its sole and nonreviewable discretion, to have variability in PCB levels which prevent a conclusive classification of the area. In lieu of treating the entire area in accordance with its classification as a more highly contaminated area, Defendant may subdivide the area and resample. The plan for any such sampling to determine these area classifications must be submitted to EPA for approval, and EPA in its sole and nonreviewable discretion, may approve the plan, or may require changes to any such sampling plan. A Phase 2-2 sampling plan shall be submitted to EPA within 45 days of receipt of the Phase 2-1 sampling results. Phase 2-2 sampling shall be completed and all results reported to EPA 90 days following EPA approval of the Phase 2-2 sampling plan.

**b. Mill Building - Work Surfaces**

1. Cressona shall submit a report containing all existing data on equipment and work surfaces at the facility by February 28, 1993. If EPA, in its sole and nonreviewable discretion, determines that additional information is necessary to characterize PCB contamination on equipment and work surfaces, Cressona shall submit a plan within sixty (60) days for review by EPA, as may be requested by EPA. Within ninety (90) days of EPA approval of the sampling plan, Cressona shall complete all sampling required by the plan and submit all results to EPA. If remediation of the equipment surfaces is required, Cressona shall submit a workplan to EPA within sixty (60) days of EPA's request for such a plan.

2. Two wipe samples shall be collected from high contact areas (including equipment surfaces and tool staging areas) in each of the three walk-in Press Pits (#9, #12, and #16).

**c. Mill Building - Floor Drains**

1. No wipe samples need be collected from inside the floor drains (after they are unplugged) which lead to the outside drainlines and Outfalls Nos. 007 and 009, since cleanup of these areas shall be conducted in any case in accordance with section V.B.2.d.

**d. Mill Building - Pits, Trenches, and Subsoils**

1. This section (Section V.B.1.d) applies only to pits and trenches where human entry is possible. Pits and trenches that cannot be entered or feasibly remediated in accordance with the requirements of a Class B floor area (i.e., obstructed) must



nonetheless be cleaned in accordance with Section V.B.2.c.1. Cressona must submit a list to EPA for approval by February 28, 1993, which designates which pits and trenches are obstructed. EPA will approve or disapprove the determination that a pit or trench is obstructed in its sole and nonreviewable discretion.

2. For pits and trenches where human entry is possible (i.e., non-obstructed), no additional sampling of the floors and walls of the pits and trenches shall be required if all pits and trenches are treated as Class B-1 floor areas. Cressona may seek to have any pit or trench reclassified as Class B-2 or Class C. Such reclassification must be based upon a sampling plan which has been approved by EPA in its sole and non reviewable discretion. The plan must include a sampling grid which is drawn in accordance with EPA Publication 560/5-85-025, and the plan must be submitted by May 30, 1993.

3. By March 31, 1993, Cressona shall prepare and submit for EPA approval a work plan to characterize PCB contamination of the concrete and subsoil under and in the vicinity of the quench tank at Stretcher #17 where recent sampling has revealed PCB contamination of 500 to 1000 ppm PCBs beneath a damaged drainline.

**e. Outdoor Drainlines**

1. Cressona shall sample all outside drainlines to determine the current level of PCB contamination.

2. This sampling must be addressed in the Toxics Reduction Evaluation (TRE), required by NPDES Permit Number PA0012726 (See Section V.B.2.g.1 on pages 30-31 of this Consent Decree).

f. EPA Approval of Sampling Plans and Workplans

1. EPA will review and comment upon all Defendant's workplan(s). Upon receipt of EPA's comments, Defendant shall incorporate EPA's comments into the workplan(s) and resubmit the workplan(s) for approval within fifteen (15) days. Upon approval by EPA, Defendant's workplan(s) shall be submitted to the Court and made a part of this Consent Decree as Addendum B.

2. Decontamination and Remediation to Achieve Target Cleanup Levels

a. Mill Building - Hydraulic Piping and Reservoirs

1. All hydraulic equipment shall be flushed in accordance with 40 C.F.R. Section 761.30(e), unless Cressona can show the PCB concentration to be less than 50 ppm.

b. Mill Building - Floor Areas

1. Class A areas:

Concrete shall be removed to a depth of 1.5". Where the flooring consists of wooden blocks as a surface layer, those blocks shall be removed. The surface remaining upon removal of the concrete or wood layer shall be encapsulated with not less than 1.5" of Portland cement.

2. Class B-1 areas:

Concrete surfaces shall be cleaned with detergent washing or by an abrasive method until the surface level of PCBs is less than 100 ug/100 cm<sup>2</sup>, and the surface shall be encapsulated with Portland cement, or an epoxy coating. Alternatively, these surfaces may be cleaned, if feasible, until the surface level

of PCBs is less than 10 ug/100 cm<sup>2</sup>, without encapsulation. If an epoxy coating is used, two coats of different colors shall be applied so that deterioration can be detected, and any deterioration so detected shall be repaired by application of another coat of epoxy of the same color. Wood blocks shall be remediated, or removed and the area restored with Portland cement to a thickness at least equivalent to the wood blocks that were removed.

3. Class B-2 areas:

These areas shall be encapsulated with Portland cement, or an epoxy coating, or shall be cleaned until the surface level of PCBs is less than 10 ug/100 cm<sup>2</sup>. If an epoxy coating is used, two coats of different colors shall be applied so that deterioration can be detected, and any deterioration so detected shall be repaired by application of another coat of epoxy of the same color.

4. Class C areas:

No cleanup is required in these areas.

5. Remediation of all floor areas shall be completed by June 30, 1995, assuming EPA substantially complies with all its targeted review timeframes in this decree relating to floor remediation. Otherwise, this deadline may be extended pursuant to Section X of this decree (pertaining to force majeure), and EPA's failure to meet some or all targeted review timeframes constitutes a force majeure event. However, EPA's failure to meet some or all targeted review timeframes will not, by itself, necessarily be considered a force majeure event.

c. Mill Building - Pits, Trenches, and Subsoils

1. All sediment, grease and other residues accumulated in the pits and trenches shall be removed. Each press pit and trench shall be cleaned by high pressure washing on a sequential basis which results in at least two complete cleaning cycles each one year period, beginning November 1, 1992. The cleaning shall be done in accordance with the ENVIRON report Proposed Press Pit and Indoor Drainage System Cleaning Program for the Cressona Aluminum Facility, June 1990 (Attachment 4). Residues collected during the washing process shall be analyzed for PCBs.

2. Cressona shall submit status reports to EPA once every 6 months after November 1, 1992, describing the cleaning of pits and trenches conducted during the previous 6 months, within 10 days of the conclusion of each 6 month period starting with the period November 1, 1992 to April 30, 1993. Each report shall also include the results of any PCB sampling and analysis conducted on the pits, trenches, or white water system during that 6 month cleaning cycle.

3. If cleaning of the indoor drainage system does not reduce PCB levels to 10 ug/100 cm<sup>2</sup> by November 1, 1993, all concrete surfaces in press pits and trenches which are not obstructed from human entry (as defined in Section V.B.1.d) shall be remediated in accordance with the requirements for Class B-1 floor areas, or B-2 floor areas. Remediation of the Pits and Trenches (if necessary) shall be done in conjunction with the indoor floor remediation (See Section V.B.2.b), semi-annual washing shall continue up to the date

of remediation. Metal surfaces and other impervious materials shall be cleaned to 10 ug/100 cm<sup>2</sup>. Checkered floor plate covers must be cleaned to 10 ug/100 cm<sup>2</sup>.

4. Semi-Annual washing of obstructed pits and trenches shall be repeated (beyond November 1, 1993, if necessary) until PCB concentrations of the residues collected during flushing are reduced to less than 10 ppm PCBs on a dry weight basis.

5. Upon completion of the investigation required by Section V.B.1.d.3 of this Decree, Cressona shall perform an analysis of the feasible alternatives for remediation of the PCB contamination in the vicinity of a damaged drainline under the quench tank at Stretcher #17. Cressona shall submit the analysis, along with a recommendation for remedial selection to EPA for approval. Within 45 days of EPA approval of the remedial selection, Cressona shall submit to EPA for approval, a workplan for implementation of the selected remedy, including a schedule for completion. Cressona shall commence implementation of the remedy within 30 days of workplan approval.

**d. Indoor "White Water" System**

1. Cressona shall take all necessary steps to assure that the plant hydraulic "white water" system contains less than 50 ppm PCBs.

2. No remediation is required for indoor piping that is an integral part of the plant hydraulic "white water" system, provided Defendant can show the system contains less than 50 ppm PCBs.

e. Equipment Decontamination

1. All impervious surfaces of equipment, tools, transport equipment, and other areas frequently contacted by workers in the Mill Building, lunch areas, tool rooms, and locker rooms shall be decontaminated to 10 ug/100 cm<sup>2</sup>. Defendant shall initiate any required cleaning by June 30, 1993, or within thirty days of EPA's approval of a remedial sampling plan submitted by Cressona in Section V.B.1.b on page 24. The cleaning shall be completed within ninety days of its initiation.

f. Outside Drainlines - Manholes and Inlets

1. Manholes, manhole interiors, and drain inlet surfaces shall be cleaned by any practicable measure to remove all PCB-Contaminated sludge and residue above 10 ug/100 cm<sup>2</sup> or 10 ppm.

2. Cressona shall start this cleaning following implementation of the Toxics Reduction Evaluation (TRE), discussed below in Section V.B.2.g. Cressona shall submit status reports to EPA each 90 days thereafter, describing the work done during the preceding 90 days.

3. Cressona shall complete this cleaning nine (9) months after completion of the TRE.

g. Outside Drainlines and Indoor Drainlines (which connect to the Outside Drainlines)

1. Remediation of PCBs in the drainlines leading to outfalls 002, 007, and 009 shall be addressed in the Toxics Reduction Evaluation (TRE), required by NPDES Permit Number PA0012726. Cressona shall evaluate, as part of the TRE, the practicability of additional

drainline cleaning (including those drainlines between plugged floor drains and connecting laterals, as well as those laterals which convey roof or other precipitation drainage, and non-contact cooling water to outfalls 002, 007, and 009) via pressure flushing with steam or detergent and the effect of such cleaning on the effluent quality in outfalls 002, 007, and 009. Cressona shall implement any practicable drainline cleaning measure unless it demonstrates that such measures will not improve effluent quality and will not result in the removal of PCB contamination from the drainlines. The TRE shall also address the practicability of cleaning and/or sampling of the outdoor manholes and inlets which are part of the drainlines leading to outfalls 002, 007 and 009.

Cressona shall implement all practicable cleaning or source removal measures recommended by the TRE. Cressona shall complete the portion of the TRE related to outfalls 002, 007, and 009 by March 28, 1993. Cressona shall commence implementation of the measures required by this portion of the TRE, and submit a workplan for this portion to EPA by May 15, 1993. The remainder of the TRE, related to the wastewater treatment plant and outfall 010, must be completed by June 27, 1993.

Cressona shall submit a progress report on TRE implementation on September 15, 1993. By May 15, 1994, Cressona shall complete TRE implementation, and submit a report which summarizes the successful completion of all required measures. TRE remedial measures not capable of completion by May 15, 1994 must be completed by June 28, 1995, to assure compliance with NPDES Permit Number

PA0012726.

h. Disposal of PCBs and PCB Contaminated Materials

1. All cleanup debris, material, and solid residues shall be placed in DOT approved containers, PCB labeled and dated. Containers shall be stored in accordance with 40 C.F.R. Sections 761.60 and 761.65, and disposed in accordance with 40 C.F.R. Section 761.60.

2. A Spill Prevention, Control and Counter-measure Plan must be prepared for the temporary storage area in accordance with 40 C.F.R. Part 112 (See 40 C.F.R. § 761.65(c)(1)(iv)).

3. During flushing of any indoor or outdoor drainline system, Cressona shall collect and analyze grab samples of the effluent at the following frequency: Once per hour for each of the first two hours, then every two hours thereafter. Any effluent containing PCBs shall be disposed of in accordance with 40 C.F.R. Section 761.60, or treated to remove the PCBs prior to discharge from any location, including Outfalls 002, 007 or 009. Cressona's effluent from each of these three outfalls must contain less than 0.5 parts per billion PCBs, unless a numerical effluent limit for PCBs specified in Cressona's NPDES Permit Number PA0012726 is in effect. Cressona shall perform monthly sampling of outfalls 002, 007 and 009 in accordance with the NPDES Permit Number PA0012726. In addition, Cressona shall perform the following monthly sampling beginning March 1, 1993: collect one (1) additional Grab Sample per month from Outfall 002 (when discharging); collect two (2) Grab Samples per month from Outfall 007 (when discharging); collect two (2) Grab Samples per month from Outfall 009 (when discharging). Each sample from these three outfalls must contain less than 0.5 parts



per billion PCBs, unless a numerical effluent limit for PCBs specified in Cressona's NPDES Permit Number PA0012726 is in effect.

All analytical results from samples collected under the NPDES Permit and this Decree shall be reported monthly to EPA. Sample results must be reported within sixty (60) days of sample collection.

4. Cressona may not, at any time, discharge any amount of PCBs to the environment other than that specified in their NPDES Permit or the alternative 0.5 part per billion effluent limit established by this decree.

### 3. Post-Cleanup Sampling

#### a. Mill Building - Floor Areas

1. Post-cleanup sampling shall be conducted in all Class C areas and in all Class B areas that are only cleaned, and are not encapsulated. Prior to performing such sampling, Defendant shall submit sampling plans to EPA. EPA review of such sampling plan is for purposes of determining that the scope of a sampling plan includes all relevant Class B and Class C areas, but such review and any EPA approval of a sampling plan does not establish that a sampling plan is technically adequate nor does such approval relieve Cressona of its responsibility to identify all PCB contamination that exceeds target cleanup levels at the site. The sampling plan shall be submitted to EPA for review by July 15, 1995. EPA shall, in its non reviewable discretion, either approve the plan, or advise Defendant of changes that are required in the plan. Cressona shall incorporate any comments

EPA makes into the plan, and shall collect the samples required under this plan by September 15, 1995.

**b. Mill Building - Pits, Trenches, and Subsoils**

1. No post-cleanup sampling is required for concrete surfaces if they have been encapsulated in a manner acceptable to EPA. Post-cleanup sampling, if required, shall include discrete wipe samples of concrete or impervious surfaces. Three wipe samples on floors and three wipe samples at each of the walls in pits must be collected. Samples in trenches must be collected every 25 ft. along the trench floor. Wipe sampling shall be used to verify decontamination of metal surfaces.

2. Cressona shall submit a plan for this sampling to EPA for review, by July 15, 1995. Cressona shall incorporate any comments EPA makes into the plan, and shall collect the samples required under this plan by September 15, 1995.

3. Cressona shall submit for EPA review and approval a post-cleanup sampling plan for the subsoils in the vicinity of the quench tank at Stretcher #17 ninety (90) days following completion of remediation. Cressona shall incorporate any comments EPA makes into the plan, and shall collect the samples and report the data collected under this plan to EPA within ninety (90) days of EPA approval of the sampling plan.

**c. Indoor Drainlines and Hydraulic Piping**

1. Floor drains shall be sampled. A wipe sample at each drain shall be collected. Cressona shall submit a plan for this sampling to EPA for review, forty five days following completion

of the TRE. Cressona shall incorporate any comments EPA makes into the plan, and shall complete the sampling required under this plan within ninety (90) days of EPA approval of the sampling plan.

2. If Cressona detects PCBs in these discharges at any time, Cressona shall repeat the corrective action proposed in accordance with section IV.B.2.g. Cressona shall report all results of all samples collected to EPA Region III by the end of the calendar month following sample collection.

d. Outside Drainlines, Manholes and Inlets

1. Post-cleanup sampling of drainlines which have been cleaned by flushing with detergent is not required, however, outfall monitoring in accordance with NPDES permit No. PA0012726 and the associated TRE is required.

2. If Cressona detects PCBs in discharges from outfalls 002, 007, 009, or 010 at any time after completion of the measures required by the TRE with respect to that outfall, at concentrations that violate the NPDES permit, or that exceed 0.5 ppb, Cressona shall immediately notify EPA, provide a general plan and schedule for action, and immediately commence performance of an outfall effluent quality assessment. Such assessment shall include additional outfall samples to determine if there are continuing PCB discharges, and the identification and sampling of likely sources of PCB contamination. Any sources of PCB contamination shall be promptly remediated in a manner consistent with the measures required by the TRE. If PCBs exceeding permit limits or 0.5 ppb continue to be detected after initial remedial efforts, Cressona shall perform a supplemental TRE with respect to that outfall

within 90 days of detection, and shall submit to EPA within 30 days thereafter a plan and schedule for implementing the measures recommended by the supplemental TRE. Cressona shall report all results of all samples collected to EPA Region III sixty days following sample collection. Cressona shall additionally provide periodic status reports on the supplemental TRE, as requested by EPA Region III (not to exceed one report every 90 days).

3. Manholes and inlets shall be wipe sampled to determine if the PCB levels are less than 10 ug/100 cm<sup>2</sup>. Cressona shall submit a plan for this sampling to EPA for review, forty five days following completion of the TRE. Cressona shall incorporate any comments EPA makes into the plan, and shall complete the sampling required under this plan within ninety (90) days of EPA approval of the sampling plan.

**e. Equipment Surfaces**

1. Cressona shall submit a plan providing for a sufficient number of random wipe samples to verify that equipment surfaces have been decontaminated to 10 ug/100 cm<sup>2</sup> by July 15, 1995. EPA, in its sole and nonreviewable discretion, may approve the plan, or may require changes to the plan, and Cressona will implement the sampling plan as modified or approved by EPA by September 15, 1995.

**f. Hydraulic Systems**

1. No post-cleanup sampling is required once Cressona has verified, in accordance with 40 C.F.R. section 761.30(e), that all systems contain hydraulic oil containing less than 50 ppm PCBs.

**g. Post-cleanup Sampling Results**

1. Defendant shall submit all post-cleanup sampling and analysis to EPA within ninety (90) days of EPA's approval of the post-cleanup sampling workplan.

2. If the post-cleanup sampling and testing reveals that all PCBs were not removed as required by the remediation plan, or if EPA determines that PCBs have not been removed as required by this Decree, Defendant shall submit a plan for completion of the cleanup to EPA for approval, and the Defendant shall thereafter repeat remediation and post-cleanup sampling activities until PCBs have been removed from the facility as required by this Decree.

3. Defendant shall certify successful completion of this phase of remediation to EPA in writing. Defendant's certification of completion of work shall include a description of all work completed under this decree. Defendant shall attach all documentation supporting its certification.

**C. Quality Assurance and Quality Control (QA/QC)**

1. Cressona shall prepare a QA/QC project plan in accordance with Attachment 5. The Quality Assurance Plan must be submitted to EPA for review and approval, and applied throughout the entire monitoring and sampling program by Cressona. This includes the sample planning and collection phase, the laboratory analysis phase, and the data interpretation phase. Chemical analysis techniques for PCBs identified for possible use in all phases of sampling at Cressona include any methodology approved for use by EPA for PCBs at the time of the actual sampling. Each participating laboratory must submit a Quality Assurance

Plan which meets the Superfund Contract Laboratory Standards, see Attachment 5. The Quality Assurance Plan must be submitted to EPA by Cressona with the submission of each sampling plan. The laboratory(s) must maintain performance records to demonstrate achievement of detection levels as specified herein and to define the quality of data that are generated. These performance reports shall be available for EPA review at any time.

**D. Safety and Health**

1. Cressona shall train cleanup workers in safety and health procedures and at all times comply with applicable OSHA, federal, state, and local regulations designed to protect workers and the environment.

**E. Oversight Contract**

By November 15, 1992, Cressona shall submit to EPA, in writing, the name(s), title(s), and qualifications of the independent third party contractor that Cressona will employ, by December 1, 1992, to monitor, review, and evaluate the progress of Cressona's cleanup contractor in implementing the cleanup plan adopted pursuant to this enforcement action. EPA shall have the right to disapprove at any time the use of the independent oversight contractor selected by Cressona. EPA's disapproval shall not be subject to review under Section XI of this Consent Decree (Dispute Resolution), or otherwise. Within thirty (30) calendar days of receipt from EPA of written notice disapproving the use of any oversight contractor, Cressona shall notify EPA, in writing, of the name(s), title(s), and qualifications of the contractor who will replace the oversight contractor disapproved by EPA.

Cressona shall notify EPA ten (10) calendar days prior to changing voluntarily its oversight contractor, and shall submit to EPA in writing, the name(s), title(s), and qualifications of the replacement oversight contractor.

The oversight contractor will determine whether the cleanup contractor has performed in accordance with the cleanup and post-cleanup sampling plans, achieved target cleanup levels, and complied with identified regulations and other conditions imposed on the Defendant. The oversight contractor shall report its findings at least monthly to EPA Region III. The findings of the oversight contractor are to assist EPA in evaluating the work at the site. Findings or determinations of the oversight contractor do not bind EPA in any way, and EPA reserves the right to differ from the oversight contractor with respect to the adequacy of any work performed under this Consent Decree, and EPA's view shall prevail in any dispute with the oversight contractor.

Cressona shall pay all costs of the oversight contractor, not to exceed \$300,000, provided cleanup activities are completed by December 1, 1995. If any activity under this decree continues past December 1, 1995, Cressona shall continue to fund the oversight contract at the rate of up to \$100,000 per year.

The oversight contractor will perform the following functions:

1. Conduct thorough and adequate reviews of all plans, reports, and data to determine compliance with the PCB regulations, policies, and court orders.
2. Provide summary progress reports to EPA on the progress achieved by Cressona on each phase of

the cleanup. Provide a final site report to EPA on the contamination found and what was done to remediate it.

3. Provide technical review of all cleanup and sampling plans and identify all deviations from the PCB regulations, policies, and court orders.
4. Notify EPA of any issues in dispute between the oversight contractor and Cressona.
5. Perform other duties as required, including any sampling requested by EPA, and to oversee the PCB cleanup by Cressona and its contractors.
6. Provide recommendations to EPA on acceptance of plans, reports, and data including identification of deficiencies.
7. Verify that cleanup contractors implement cleanup and QA/QC plans as approved by EPA.
8. Provide an on-site representative to perform direct observations and interviews to gather information sufficient to perform the functions identified above.
9. Attend quarterly meetings and provide progress briefings.

#### VI. COMPLIANCE REQUIREMENTS - CWA

A. Cressona shall comply with all requirements and conditions set forth in its NPDES permit, or any successor NPDES permit, and



(p. 41)

Streams Law.

B. REPORTING

1. The reporting requirements imposed by this Decree shall not relieve Cressona of any other reporting or notification requirements imposed by federal, state or local law or permit.

2. Beginning with the 15th day of the third month following entry of the Consent Decree, and every third month thereafter on the 15th day of the month, Cressona shall submit in writing to the United States a report of any instance of non-compliance with any term of NPDES Permit Number PA0012726, the cause(s) and the steps taken to remedy such non-compliance.

3. During the life of this Consent Decree, whenever Cressona discharges pollutants from the facility to a water of the United States which discharge is not authorized by Cressona's NPDES permit, Cressona shall, within 15 days of the occurrence of such discharge, submit to the United States a written report containing all of the information required in Attachment 6 to this Decree.

VII. STIPULATED PENALTIES

4. If Defendant fails to comply with any of the requirements of this Consent Decree, other than those requirements addressed by paragraphs VII.5, 6 and 7, including any milestone contained in the corrective action plan, Defendant shall automatically pay stipulated penalties for each violation as follows:

Period of Failure to Comply

Penalty

1st to 30th day

\$ 1,500.00/day per violation

31st to 60th day

\$ 3,000.00/day per violation

After 60 days

\$ 5,000.00/day per violation

Defendant shall pay stipulated penalties for discharges of PCBs as follows (If a numerical effluent limit for PCBs is specified in Cressona's NPDES Permit, only the stipulated penalties specified in section VII.5 will apply.):

<u>PCB Effluent Concentration (ppb)</u>	<u>Penalty</u>
0.51 to 1.99 ppb	\$ 250.00/day per violation
2.00 to 2.49 ppb	\$ 500.00/day per violation
2.50 to 2.99 ppb	\$ 750.00/day per violation
3.00 to 3.49 ppb	\$1,000.00/day per violation
3.50 to 3.99 ppb	\$1,250.00/day per violation
4.00 to 4.49 ppb	\$1,500.00/day per violation
4.50 to 4.99 ppb	\$1,750.00/day per violation
5.00 ppb and above	\$2,000.00/day per violation

5. Commencing upon lodging of the Consent Decree, if Cressona violates an effluent limitation of its NPDES permit, Cressona shall pay the following stipulated civil penalties:

For monthly average limitation	\$10,000 per month of violation for each parameter
For daily maximum limitation	\$ 5,000 per day of violation for each parameter
For a pH excursion	\$ 5,000 per day of violation

6. Commencing upon lodging of this Consent Decree, if Cressona discharges a pollutant or pollutants from the facility to the Schuylkill

River or to any other waters of the United States, which discharge is not authorized by Cressona's NPDES permit, Cressona shall automatically pay a stipulated civil penalty of \$15,000 per day of discharge for each pollutant discharged.

7. If Cressona fails to comply with a reporting deadline contained in this Consent Decree, Cressona shall pay a stipulated penalty of \$500 per day of each failure to comply.

8. The stipulated penalties herein shall be in addition to, and not in lieu of, any other remedies or sanctions available to the United States by reason of Defendant's failure to comply with the requirements of this Consent Decree, the PCB regulations, TSCA, the CWA, or NPDES Permit No. PA0012726.

9. Stipulated penalties shall be paid by Defendant by cashiers check payable to "Treasurer of the United States," and shall be tendered to the United States Attorney for the Eastern District of Pennsylvania, 615 Chestnut Street, Philadelphia, Pennsylvania 19107, by the 15th day of the month following the month in which the violations occurred, together with a letter describing the basis for the payment. A copy of the transmittal letter and the check shall be mailed to the following: United States Environmental Protection Agency, Region III, Office of Regional Counsel, Attn: Suzanne Canning, Docket Clerk, 841 Chestnut Building, Philadelphia, PA 19107; and Environmental Enforcement Section, United States Department of Justice, P. O. Box 7611, Ben Franklin Station, Washington, D.C. 20044.

**VIII. LATE PAYMENT CHARGE**

10. Defendant shall pay interest, at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, for any delinquent payment of a civil or stipulated penalty. In addition, after the first (30) days that any amount of a penalty is overdue, Defendant shall pay a late payment charge of 6 per cent on the amount of any penalty that is overdue; this late payment charge shall be computed on a quarterly basis.

**IX. PENALTY FOR PAST VIOLATIONS**

11. Cressona shall pay a civil penalty in the amount of \$200,000.00. Payment of this civil penalty shall constitute a complete and final release by the United States of Cressona's liability for civil penalties for CWA violations that occurred prior to the date of filing of the United States' complaint. Such a release, however, shall not apply to any violation not reported or inaccurately reported to EPA or the Commonwealth of Pennsylvania.

12. Within thirty (30) days after the entry of this Consent Decree, Cressona shall tender a certified or cashier's check for \$200,000.00, payable to the "Treasurer, United States of America" to the United States Attorney for the Eastern District of Pennsylvania, 615 Chestnut St., Philadelphia, Pennsylvania 19107. A copy of the transmittal letter and the check shall be mailed to the following: United States Environmental Protection Agency, Region III, Office of Regional Counsel, Attn: Suzanne Canning, Docket Clerk, 841 Chestnut Building, Philadelphia, PA 19107; and Environmental Enforcement Section, United States Department

of Justice, P. O. Box 7611, Ben Franklin Station, Washington, D.C. 20044.

13. In the event this Consent Decree is not entered on or before January 1, 1993, Defendant shall deposit the penalty amount of \$200,000.00 into an interest bearing escrow account within five days of that date. Within 15 days after entry of this Decree Defendant shall withdraw the principal plus all accrued interest from the escrow account and make payment of that entire amount by certified or cashier's check (with transmittal letter) to the address specified in subparagraph 12 above.

**X. DELAYS OR IMPEDIMENTS TO PERFORMANCE (FORCE MAJEURE)**

14. If any event occurs that causes or may cause Defendant to violate any provision of this Consent Decree, Defendant shall notify the Court, the United States Attorney for the Eastern District of Pennsylvania, EPA and the Department of Justice in writing immediately. The notice shall specifically reference Paragraph X of this Consent Decree and describe in detail the anticipated length of time the violation may persist, the precise cause or causes of the violation, the measures taken or to be taken by Defendant to prevent or minimize the violation as well as to prevent future violations, and the timetable by which those measures will be implemented. Defendant shall adopt all reasonable measures to avoid or minimize any such violation. Failure by Defendant to comply with the notice requirements of this Paragraph shall render this Paragraph void and of no effect as to the particular incident involved, and shall constitute a waiver of Defendant's right to obtain

an extension of time for its obligations under this Paragraph based on such incident.

15. If EPA agrees that the violation has been or will be caused entirely by circumstances beyond the control of Defendant or any entity controlled by Defendant, including Defendant's consultants and contractors, and that Defendant could not have foreseen and prevented such violation, the time for performance of such requirement may be extended for a period not to exceed the actual delay resulting from such circumstance, and stipulated penalties shall not be due for said delay. In the event EPA does not so agree, Defendant may submit the matter to the Court for resolution. If Defendant submits the matter to the Court for resolution and the Court determines that the violation was caused entirely by circumstances beyond the control of Defendant or any entity controlled by Defendant, including Defendant's consultants or contractors, Defendant shall be excused as to that violation, but only for the period of time the violation continues due to such circumstances. If Defendant submits the matter to the Court for resolution and the Court determines that the violation was not caused entirely by circumstances beyond the control of Defendant or any entity controlled by Defendant, including Defendant's consultants or contractors, Defendant shall pay all costs and expenses incurred by the United States, including attorney's fees, incurred in responding to Defendant's petition to the Court.

16. Unanticipated or increased costs or expenses associated with the implementation of this Consent Decree, changed financial circumstances, or technical infeasibility shall not, in any event,

serve as a basis for changes in this Consent Decree or extensions of time under this Consent Decree.

17. Compliance with any requirement of this Consent Decree, by itself, shall not constitute compliance with any other requirement. An extension of one compliance date based on a particular incident shall not result in an extension of a subsequent compliance date or dates unless specifically authorized by EPA. Defendant must make an individual showing of proof regarding each delayed incremental step or other requirement for which an extension is sought.

18. Defendant shall bear the burden of proving that any delay or violation of any requirement of this Consent Decree was caused entirely by circumstances beyond the control of Defendant or any entity controlled by Defendant, including Defendant's consultants or contractors. Defendant shall also bear the burden of proving the duration and extent of any delay or violation attributable to such circumstances.

#### **XI. DISPUTE RESOLUTION**

19. If the parties are unable to agree upon any plan, procedure, standard, requirement, or other matter described herein, or in the event a dispute should arise among the parties regarding the implementation of the requirements of this Consent Decree, Defendant shall follow the position of the United States unless Defendant files a petition with the Court for resolution of the dispute within thirty (30) days of receipt of notice of the United States, final position. The petition shall set out the nature of the dispute with a proposal for its resolution. The United States shall have thirty (30) days to file a response. In any such dispute, Defendant shall have the burden of proving that